

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2334 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

AD OZA

Versus

CHAIRMAN AND MANAGER DIRECTOR

Appearance:

MR DU SHAH for Petitioner
RULE SERVED for Respondent No. 1, 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 03/03/2000

ORAL JUDGEMENT

This is a petition under Article 226 of the Constitution of India for appropriate writ, order or direction for quashing and setting aside the impugned orders at Exh. 'E' dated 18.4.1983, Exh. 'G' dated

11.5.1983 and Exh. 'I' dated 7.6.1983 and also for directing the respondent to pay the petitioner the forfeited amount of gratuity and provident fund contribution of the Bank with interest and cost of the litigation.

2. The petitioner was initially appointed as Clerk in the respondent-Bank. A departmental enquiry was conducted against the petitioner and the findings recorded by the Inquiry Officer dated 10.8.1982 were against the petitioner. The charges levelled were proved against the petitioner which are reproduced hereunder:

- (1) Misappropriation of Bank's funds/and or committing a fraud involving or likely to involve Bank into financial loss
- (2) Lack of integrity in discharge of duties
- (3) Committing acts prejudicial to the interest of the Bank
- (4) Frequently withdrawing salary in advance without satisfactory reasons or explanations for it"

Thereafter the Dy.General Manager (Personnel) passed an order dated 4.11.1982 dismissing the petitioner from the employment. The petitioner preferred an appeal as well as Mercy petition on 29.11.1982 before the General Manager, who on 14.12.1982, passed an order that the petitioner be removed from the services of the Bank with immediate effect.

3. Thereafter the petitioner claimed his terminal benefits. It seems that the benefits were ultimately rejected. So far as the gratuity and amount of contribution of provident fund of the Bank is concerned, the petitioner claims that the respondents have illegally and wrongly deprived of the said legitimate terminal benefits and, therefore, he claims that the said orders be quashed and the respondents be directed to pay to the petitioner the amount of gratuity and contribution of the Bank to the provident fund account of the petitioner with interest and costs of the litigation.

4. The respondent Bank was duly served but none appears on behalf of the respondent.

5. I have heard Mr D U Shah, learned Advocate for the petitioner and have seen the records made available to me. As said above, it is an admitted position that

the petitioner was removed from service on account of misappropriation of bank's fund and for other charges levelled against him. The said order has become final and it is interesting to note that the order dated 14.12.1982 under which the petitioner has been finally removed from the service by the General Manager of the respondent Bank, has not been challenged by the petitioner in this petition. Therefore, the said order has become final against him. The petitioner claims gratuity at the first instance. Mr D U Shah, learned Advocate for the petitioner has referred to me the provisions with respect to the gratuity payable to the petitioner. In fact, it is a fund known as "Dena Bank Employees Gratuity Fund". The relevant provision-Section 12 of the said Gratuity Fund reads as under:

(12) Notwithstanding anything contained to the preceding clauses;

a) The gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of property belonging to the employer, shall be forfeited to the extent of the damages or loss so caused,

(b) The gratuity payable shall be wholly forfeited.

i) If the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) If the services of such employees have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment"

Sub clause (ii) of clause (b) of Rule 12 makes it clear that if the services of an employee have been terminated for any act which constitutes an offence involving moral turpitude, then in that event, the gratuity amount shall be wholly forfeited.

6. Here it is a fact that the petitioner has been

removed from the service on account of misappropriation of bank's fund. This certainly amounts to offence involving moral turpitude and, therefore, it squarely falls within the four corners of Rule 12 referred to above. Initial order dated 4.11.1982 is placed at page 10 of the petition. The mercy petition and appeal dated 29.11.1982 is annexed as Exh. 'B' at page 12 of the petition. The initial order dated 4.12.1982 is placed at page 14 of the petition. The demand of the petitioner dated 1.1.1983 is at page 17. He has been replied by letter dated 18.4.1983 at page 18. In that letter the Regional Manager of the Bank has clearly indicated that since the petitioner's service has been terminated for act which constitutes an offence involving moral turpitude, the gratuity was forfeited. Therefore, even according to the decision of the respondent-Bank, the petitioner committed an act of offence involving moral turpitude. Therefore also this case squarely falls within the four corners of Rule 12 and the said Rule is very clear that the petitioner cannot get gratuity amount and the respondent-Bank was entitled to forfeit the amount of gratuity. Since the respondent-Bank acted in accordance with the provisions of Rule 12, it cannot be said that any illegality has been committed by them in arriving at the decision to forfeit the gratuity amount. In other words, it cannot be said that the respondent-Bank committed illegality while forfeiting the amount of gratuity of the petitioner on account of the petitioner's act constituting offence involving moral turpitude. Therefore, the said action of the respondent cannot be challenged by the petitioner.

7. Another plea of the petitioner is that he has been wrongly deprived of the provident fund contribution of the respondent-Bank to the petitioner. In this regard, Sections 17 and 18 of the Rules of 'Dena Bank Employees' Provident Fund' are relevant which are reproduced as under:

"17. Any contributor who is dismissed for insubordination, misconduct, fraud or any other cause of a like nature or retires from the Bank in consequence thereof shall only be entitled to repayment of the amount of his own contributions with the interest accrued thereon at the rate and in manner aforesaid. The Trustees shall be the sole judge of the sufficiency of the cause of the dismissal or retirement of any contributor in any

of the foregoing cases.

18. If a contributor is dismissed for fraud or misconduct the Bank shall be entitled to recover from the contributions made by the Bank to the individual account of the contributor and the interest (simple and compound) credited in respect of such contribution any loss or damage resulting to the Bank from the cause entailing such dismissal. The Board shall be entitled to declare the amount of loss or damage so resulting and their declaration in that behalf shall be final and conclusive and the amount so declared shall be paid to the Bank."

On a bare reading of the said two Rules, it becomes clear that if a contributor is dismissed for fraud or any other cause of a like nature from the Bank, he will be entitled to repayment of amount of his own contribution with interest thereon. This would mean that he will not be entitled to any amount of contribution of the bank. So far as his own contribution is concerned, it is a matter of record that the said amount has already been paid to him and this can be gathered from the certificate dated 2.8.1983 issued by the Hon. Secretary to the Dena Bank Employees Provident Fund, which is placed at page 31 of the petition, which clearly shows that the petitioner has been paid Rs.42061.37 paise being P.F. amount due to him. This has been produced by the petitioner himself and there is no dispute raised by him regarding non-payment thereof.

8. It is very clear that the petitioner has been paid his own contribution as per Rules 17 and the petitioner is not entitled to receive any amount from the Bank towards amount of contribution of the Bank. As per Rule Rule 12 (b) (i), the petitioner is not entitled to gratuity amount also. These were the two prayers advanced by him in this petition. Since the petitioner is not entitled to either of the two, the petition is without any merit and it deserves to be dismissed. Since the respondent has not made appearance in the matter, there is no question of any cost to be awarded to the respondent.

9. In view of the aforesaid, this Special Civil Application is dismissed. Rule discharged. No order as to costs.

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msp.